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IBM CORPORATION (VE)
C/O VOLEL EMILE
P. O. BOX 162485
AUSTIN, TX 78716

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SUSANN MARIE KEOHANE and HERMAN RODRIGUEZ

Appeal 2007-3228
Application 09/965,004
Technology Center 2100

Decided: August 20, 2008

Before JAMES D. THOMAS, LANCE LEONARD BARRY, and THU A. DANG, *Administrative Patent Judges*.

DANG, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF CASE

Appellants appeal the Examiner's final rejection of claims 1-20 under 35 U.S.C. § 134 (2002). We have jurisdiction under 35 U.S.C. § 6(b) (2002).

A. INVENTION

According to Appellants, the invention is directed to a web browser, and more specifically, the invention is directed to an apparatus and method for selecting a home page for a web browser based on a scheduler or network connection (Spec. 1, ll. 8-11).

B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary and is reproduced below:

1. A method for a Web browser to display a home page upon activation comprising the steps of:

determining whether a default home page is presently accessible;

accessing the default home page if the default home page is determined to be presently accessible or an alternate home page if the default home page is not determined to be presently accessible to download data representing the default home page or the alternate homepage, respectively; and

displaying the respective downloaded data.

C. REJECTIONS

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Gifford	US 6,052,718	Apr. 18, 2000
Russell-Falla	US 6,675,162 B1	Jan. 6, 2004 (Filed May 7, 2001)

University of Maryland, http://web.archive.org/web/20000229222954/http://www.lectudo.umd.edu/Registrar.html (2000).

Claims 1, 6, 11, and 16 stand rejected under 35 U.S.C. § 102(e) over the teachings of Russell-Falla; and

Claims 2, 3, 7, 8, 12, 13, 17, and 18 stand rejected under 35 U.S.C. § 103(a) over the teachings of Russell-Falla and University of Maryland.

Claims 4, 5, 9, 10, 14, 15, 19, and 20 stand rejected under 35 U.S.C. § 103(a) over the teachings of Russell-Falla and Gifford.

We affirm.

II. ISSUES

The issues are whether Appellants have shown that the Examiner erred in finding that:

(A) claims 1, 6, 11, and 16 are unpatentable under 35 U.S.C. § 102(e) over the teachings of Russell-Falla, and particularly, Russell-Falla discloses the claimed limitation of determining whether a page is accessible;

(B) claims 2, 3, 7, 8, 12, 13, 17, and 18 are unpatentable under 35 U.S.C. § 103(a) over the teachings of Russell-Falla and University of Maryland; and

(C) claims 4, 5, 9, 10, 14, 15, 19, and 20 are unpatentable under 35 U.S.C. § 103(a) over the teachings of Russell-Falla and Gifford.

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Russell-Falla

1. In Rusell-Falla, the user interacts with the browser software to access a selected web site or page using a predetermined URL. When the target page is downloaded to the user's computer, it is "intercepted" by proxy server 10, and the page is then analyzed to determine a rating score. If the rating of the page exceeds the applicable threshold or range of values for the current user, a control signal shown at path 62 controls gate 64 so as to prevent the present page from being displayed at the browser display 52 (col. 5, l. 53 to col. 6, l. 21; Fig. 1).

IV. PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 102, "[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation." *Perricone v. Medicis Pharm Corp.,* 432 F.3d 1368, 1375-76 (Fed. Cir. 2005) (citation omitted). "Anticipation of a patent claim requires a finding that the claim at issue 'reads on' a prior art reference." *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed Cir. 1999) ("In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from

practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.") (citations omitted).

The *claims* measure the invention. *See SRI Int'l v. Matsushita Elec. Corp.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (en banc). "[T]he PTO gives claims their 'broadest reasonable interpretation.'" *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). "Moreover, limitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)). Our reviewing court has repeatedly warned against confining the claims to specific embodiments described in the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (en banc).

In the absence of separate arguments with respect to claims subject to the same rejection, those claims stand or fall with the claim for which an argument was made. *See In re Young,* 927 F.2d 588, 590 (Fed. Cir. 1991). *See also* 37 C.F.R. § 41.37(c)(1)(vii)(2004).

V. ANALYSIS

35 U.S.C. § 102(e)

Appellants do not provide separate arguments with respect to the rejection of independent claims 1, 6, 11, and 16. Therefore, we select independent claim 1 as being representative of the cited claims. 37 C.F.R. § 41.37(c)(1)(vii).

Appellants argue that "Russell-Falla et al. do not teach, show or suggest a method of ***determining whether a default home page is accessible***" but rather "teach a method of ***determining whether to block*** the display of a Web page that has been ***accessed***" (App. Br. 5). Appellants assert that "***determining whether to block the display of a Web page*** is quite different from ***determining whether a Web page is accessible***" since "Russell-Falla et al. teach to first access the Web page" and "an analysis of the content is undertaken to determine whether the content should be blocked from being displayed to the user" (App. Br. 5).

We begin our analysis by giving the claims their broadest reasonable interpretation. *See In re Bigio* at 1324. Furthermore, our analysis will not read limitations into the claims from the specification. *See In re Van Geuns* at 1184.

Appellants' arguments that Russell-Falla does not disclose the claimed "determining whether a default home page is accessible" limitation because Russell-Falla teaches "determining whether to block the display of a Web page" are not commensurate with the invention that is claimed. That is, Appellants appear to be arguing that Russell-Falla discloses determining whether a page is accessible *to a user* after it is accessible *to a proxy server*, and thus, Russell-Falla does not disclose determining whether a page is accessible *to a proxy server*. Such accessible *to a proxy server* limitation cannot be read into the claims and such argument is not commensurate with the claimed invention. Accordingly, the issue is whether Russell-Falla

discloses the claimed limitation of determining whether a page is accessible (by either a user or a proxy server).

We agree with the Examiner's position as to Russell-Falla disclosing the claimed elements on appeal beginning at page 3 of the Answer, and the Examiner's corresponding responsive arguments beginning at page 7 of the Answer. Russell-Falla discloses determining whether or not to display a web page to a user (FF 1), as agreed by the Appellants (App. Br. 5). We agree with the Examiner that such determining of accessibility by a user, as taught by Russell-Falla, is a step of determining whether a page is accessible, as recited in claim 1.

Accordingly, we conclude that Russell-Falla discloses the claimed limitation of determining whether a page is accessible and that the Appellants have not shown that the Examiner erred in rejecting claim 1 and claims 6, 11, and 16 falling with claim 1 under 35 U.S.C. § 102(e).

35 U.S.C. § 103(a)

As to claims 2, 3, 7, 8, 12, 13, 17, and 18, rather than arguing the rejection of these claims separately, the Appellants rely on the aforementioned arguments (App. Br. 5). Unpersuaded by these aforementioned arguments, we also affirm the rejections of these claims.

Accordingly, we find that the Appellants have not shown that the Examiner erred in rejecting claims 2, 3, 7, 8, 12, 13, 17, and 18 as

unpatentable over Russell-Falla and University of Maryland under 35 U.S.C. § 103(a).

Similarly, the Appellants rely on the aforementioned arguments rather than separately arguing the rejection of claims 4, 5, 9, 10, 14, 15, 19, and 20 (App. Br. 5). Thus, we also affirm the rejections of these claims and find that the Appellants have not shown that the Examiner erred in rejecting claims 4, 5, 9, 10, 14, 15, 19, and 20 as unpatentable over Russell-Falla and Gifford under 35 U.S.C. § 103(a).

CONCLUSIONS OF LAW

(1) Appellants have not shown that the Examiner erred in finding claims 1, 6, 11, and 16 unpatentable under 35 U.S.C. § 102(e) over the teachings of Russell-Falla.

(2) Appellants have not shown that the Examiner erred in finding claims 2, 3, 7, 8, 12, 13, 17, and 18 unpatentable under 35 U.S.C. § 103(a) over the teachings of Russell-Falla and University of Maryland.

(3) Appellants have not shown that the Examiner erred in finding claims 4, 5, 9, 10, 14, 15, 19, and 20 unpatentable under 35 U.S.C. § 103(a) over the teachings of Russell-Falla and Gifford.

(4) Claims 1-20 are not patentable.

DECISION

The Examiner's rejections of claims 1, 6, 11, and 16 under 35 U.S.C. § 102(e) and claims 2-5, 7-10, 12-15, and 17-20 under 35 U.S.C. § 103(a) are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

rwk

IBM CORPORATION (VE)
C/O VOLEL EMILE
P. O. BOX 162485
AUSTIN TX 78716